IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No. 720 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the Civil Judge?

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MEGHNA BRIJEN SHAH(GORASIA) - Applicant(s)
Versus
STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :
MR DIPEN K DAVE for Applicant(s) : 1,
MR RC KODEKAR, ADDL. PUBLIC PROSECUTOR for Respondent(s) : 1,
MR YF MEHTA for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 03/08/2007

ORAL JUDGMENT

1. Present application has been filed under Section 482 of the Criminal Procedure Code (for short “Cr.P.C.”), by the petitioner – accused No.2 to quash

and set aside the Criminal Case No. 2167 of 2004 filed in the Court of Metropolitan Magistrate, Court No. 21, Ahmedabad under Section 138 of the Negotiable Instrument Act (for short “the N.I.Act”).

2. A criminal case has been filed by the respondent No.2 – original complainant against the petitioner and two others for the offence punishable under Section 138 of the N.I.Act alleging inter-alia that original accused no. 1 is a Private Limited Company, incorporated under the provisions of the Companies Act. Accused No. 2 to 4 have introduced themselves to be the Directors of Accused No.1 – Company. Accused No.2 is the daughter of Mr.Brijen Gokuldas Shah (Gorasia) and said Mr.Brijen is a brother-in-law of the complainant's elder brother Mr.Hasmukh Babulal Parekh. It is also further averred in the complaint that accused Nos.2 to 4 are in total control of all acts, deeds and affairs of the accused No.1 – Company. It is also averred in the complaint that the accused have given cheque No. 476933 of State Bank of Hyderabad, Gheekanta Branch, Ahmedabad dated 28.07.2003 of Rs.25 lacs to the complainant and the complainant presented the cheque to his banker

for realization, but the said cheque was returned unpaid by the banker on account of insufficiency of funds in their accounts. When informed accordingly, the accused requested the complainant to represent the said cheque afresh with an assurance that the same will be positively paid. It it averred in the complaint that the complainant deposited the said cheque on 10.01.2004 for payment, but the same was returned unpaid with an endorsement “insufficient funds”. Thereafter, the complainant was constrained to serve legal notice dated 19.01.2004. Notice of accused No.1 returned unserved. After waiting for statutory period, as the said amount was not paid, the complainant has filed aforesaid complaint against the accused persons and the learned trial Court has issued summons against the accused for the offence punishable under Section 138 of the N.I.Act and therefore, the petitioner – original accused No.2 has preferred the present application under Section 482 of the Cr.P.C. to quash the said complaint.

3. Mr. Dave, learned Advocate appearing on behalf of the petitioner has vehemently submitted

that the petitioner – original accused No.2 was neither Director of the original accused No.1 – Company nor signatory of the cheque in question, and therefore, it cannot be said that the petitioner has committed any offence as alleged under Section 138 of the N.I.Act. It is further submitted that in fact the petitioner was serving as Manager, H.R. And Chief Operating Officer, however, she has resigned as Chief Operating Officer vide resignation letter dated 01.09.2004 and the same was accepted and the same was much prior to the impugned cheque in question, therefore, no case is made out against the petitioner for the offence under Section 138 of the N.I.Act as alleged. Therefore, it is requested to allow the present application and quash and set aside the complaint qua the applicant.

4. Mr.Y.F.Mehta, learned Advocate appearing on behalf of respondent No.2 – original complainant has submitted that there are specific averments in the complaint making out a case against the petitioner for the offence under Section 138 of the N.I.Act, and therefore, the impugned complaint is not required to be quashed and set aside in exercise of powers under

Section 482 of the Cr.P.C. and requested to dismiss the present application.

5. Mr.R.C.Kodekar, learned Additional Public Prosecutor has requested to pass an appropriate order considering the averments in the complaint against the applicant – original accused No.2.

6. Heard the learned Advocates appearing on behalf of the respective parties.

7. It is not in dispute that cheque in question has been issued by the original accused No.1 – Ziback E-Services Private Limited and in the cause title the applicant – original accused No.2 is shown as Director / Chief Operating Officer of Accused No.1-Company. It is the case on behalf of the petitioner that she has already resigned as Chief Operating Officer since 01.09.2003 and the same was also accepted by the Company on 01.10.2003. The petitioner has also produced Search Report of the records of the Registrar of Companies (ROC), Gujarat in respect of original accused No.1 – Company and considering the same it appears that the applicant

was never the Director of the Company. When the applicant was never the Director of the Company, at the most it can be said that she was serving as Chief Operating Officer; that in absence of any averment that she is signatory of the cheque in question and /or on any other ground she can be held vicarious liable, it cannot be said that the petitioner has committed any offence as alleged under Section 138 of the N.I.Act. On bare reading of the complaint, considering the complaint as a whole, and averments in the complaint, no case is made out against the applicant – original accused No.2 for the offence under Section 138 of the N.I.Act. To continue the criminal proceedings / prosecution against the applicant would be abuse of process of law, under the circumstances, impugned complaint qua the applicant-original accused No.2 is required to be quashed and set aside.

8. For the reasons stated above, the application succeeds, the impugned complaint being Criminal Case No. 2167 of 2006 filed in the Court of Metropolitan Magistrate, Court No. 21, Ahmedabad under Section 138 of the Negotiable Instrument Act is

hereby quashed and set aside qua the applicant – original accused No.2 only. However, it is observed that it will be open for the original complainant to initiate criminal proceedings against the applicant for the offence punishable under Indian Penal Code, if the original complainant so chooses and the same shall be considered in accordance with law and on its own merits. It is also observed that the present complaint is quashed only for the offence under Section 138 of the N.I.Act. The original complainant is not precluded from initiating appropriate other proceedings, if so permissible. Rule is made absolute to the aforesaid extent.

[M.R.Shah, J.]

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